MULTIMEDIA UNIVERSITY

STUDENT ID NO | | | | | | | | | | |

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2015/2016

ULT2622 – LAW OF TORTS II

(All Sections / Groups)

7th MARCH 2016
Reading Time: 9.00 am - 9.15 am
(15 Minutes)
Answering Time: 9.15 am – 12.15 pm
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 2 pages with 5 Questions only.

3. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Please write all your answers in the Answer Booklet provided.

QUESTION 1

The court in *Cambridge Water v Eastern Counties Leather plc [1994]* 1 All ER 53 has referred to the case of *Wagon Mound [1961]* 1 All ER 404 on foreseeability of damage. Discuss the reasons adopted by Lord Goff in accepting foreseeability as a pre-requisite in the rule of *Rylands v Fletcher*.

In your opinion, do you think it has undermined the spirit of strict liability in *Rylands v Fletcher*?

(Total: 25 marks)

QUESTION 2

In 1980, Harry established a furniture company under the name "Goodluck Furniture House". Over the years, his company managed to get many business contracts and earned a lot of profits. Recently, Stanley started the same business with the same get-up of the company premises under the name "Goodlook Furniture House". Ever since Stanley started his furniture company, there has been a 30% fall in Harry's furniture sales.

Advise Harry.

Would your answer be different, if Stanley set up a toy shop under the name of "Goodlook Toy House"? Substantiate your answer with the aid of decided cases.

(Total: 25 marks)

QUESTION 3

Chip and Dale are drivers for YouBer, a mobile ride-hailing company. YouBer uses a mobile app to allow customers to book a car or taxi from a predetermined point. When a customer hails for a YouBer car, YouBer's system will send an alert to the nearest driver who is free to pick up a customer. After the driver has dropped the customer off at his or her destination, YouBer will calculate the fare based on a pre-set formula and charge the amount to the customer's credit card. No cash is paid to the driver, and the driver will be credited his daily proceeds on a profit-sharing basis between YouBer and the drivers.

Anyone may register with YouBer to be a driver, whether or not he is licensed by the authorities as a taxi driver. YouBer does not supply any vehicles to Chip and Dale, and neither do Chip and Dale have to wear a uniform although they are required to present themselves smartly. The cost of petrol and vehicle maintenance will be borne by the drivers, and many drivers, including Chip and Dale, use their own private cars to ferry customers.

Chip recently was involved in a rear-end collision while ferrying a YouBer customer. Police investigation has shown that Chip is solely responsible for the collision. Chip's insurer has refused to make a pay-out on the ground that, in contravention to his insurance policy, Chip's car was used as an unlicensed taxi when the collision happened. The only recourse for the affected victim, Donald, is to claim directly from Chip and YouBer.

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YouBer has also received a letter of demand from a customer who has taken a ride from Dale. The customer, Daisy, complained that she was slapped by Dale in an altercation concerning the long and expensive route taken by Dale to reach Daisy's destination. The letter of demand as prepared by Daisy's solicitor seeks general and special damages amounting to RM10,000 for injury, pain and humiliation.

Advise YouBer on:

(1) Whether YouBer could be liable for the actions of Chip and Dale; (10 marks)

(2) Whether any defences can be raised by YouBer; and (7 marks)

(3) Whether YouBer could personally be liable for the above actions. (8 marks)

Note that this question does not require a separate section for introduction and conclusion.

(Total: 25 marks)

QUESTION 4

Archie was a 35-year old computer programmer. He was unmarried and lived with his parents. Archie's annual income before tax was RM80,000. He paid tax of 25% and used about 20% of his RM80,000 income for personal expenses. The rest of his money went to his household expenses or his savings. He bought a life insurance for RM500,000 in the event of death before 70 years old. One day, on his way to work, Archie was killed in a car accident due solely to the fault of the other driver.

Calculate how much compensation Archie's parents may claim under Malaysian law.

(Total: 25 marks)

QUESTION 5

Discuss the differences between the principles behind granting a perpetual injunction and an interlocutory injunction in the case of nuisance.

(Total: 25 marks)

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